



**PART 936—MARKETING ORDER  
REGULATING THE HANDLING  
OF PROCESSED BLACKBERRIES  
PRODUCED IN THE STATES OF  
OREGON AND WASHINGTON**

**Subpart--Order Regulating Handling**

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**Subpart--Order Regulating Handling**

**Definitions**

**§ 936.1 Secretary.**

*Secretary* means the Secretary of Agriculture of the United States, or any other officer or employee of the United States Department of Agriculture who is, or who may be, authorized to perform

the duties of the Secretary of Agriculture of the United States.

**§ 936.2 USDA.**

*USDA* means the United States Department of Agriculture.

**§ 936.3 Act**

*Act* means Public Act No. 10, 73d Congress, as amended, and reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (sections 1-19, Stat. 31, as amended; 7 U.S.C. 601-674).

**§ 936.4 Person.**

*Person* means an individual, partnership, corporation, association, or any other business unit.

**§ 936.5 Blackberries.**

*Blackberries* means all varieties of blackberries grown in the production area classified botanically as *Rubus Eubatus*. Blackberries shall be segregated into the following classes:

“Class 1”—Marion blackberries or marionberries.

“Class 2”—Evergreen blackberries.

“Class 3”—Boysenberries.

“Class 4”—Sylvan blackberries.

“Class 5”—Organically grown blackberries.

“Class 6”—All other varieties of blackberries.

The Board, with the approval of the Secretary, may change these classes to recognize new, or delete obsolete, classes.

#### **§ 936.6 Production area.**

*Production area* means all the area within the States of Oregon and Washington.

#### **§ 936.7 Grower.**

*Grower* is synonymous with *producer* and means any person engaged in a proprietary capacity in the commercial production of blackberries or who causes it to be produced.

#### **§ 936.8 Handler.**

*Handler* means any person who handles blackberries.

#### **§ 936.9 Handle.**

*Handle* means the process to can, concentrate, freeze, press or puree blackberries, or in any other way convert blackberries commercially into a processed product, or otherwise place blackberries into the current of commerce within the production area or from the area to points outside thereof: *Provided*, That the term *handle* shall not include:

- (a) The canning, concentrating, freezing, pressing, pureeing or the converting, in any other way, blackberries to a processed product for home use and not for resale,
- (b) The sale or transportation of blackberries by a grower to a handler of record within the production area,
- (c) The transfer of excess blackberries by the grower to another grower to enable that grower to fill a deficiency in an annual allotment, or
- (d) The sale or transportation of blackberries for fresh use.

#### **§ 936.10 Marketing year.**

*Marketing year* means the 12 months from June 1 to the following May 31, inclusive, or such other period as the Board, with the approval of the Secretary, may establish.

#### **§ 936.11 Salable blackberries.**

*Salable blackberries* means those blackberries which are free to be handled.

#### **§ 936.12 Salable quantity.**

*Salable quantity* means the total quantity of each class of blackberries which handlers may handle on behalf of growers during a marketing year.

#### **§ 936.13 Annual allotment.**

*Annual allotment* means that portion of the salable quantity prorated to a grower.

#### **§ 936.14 Part and subpart.**

*Part* means the order regulating the handling of blackberries grown in the production area, and all rules and regulations issued thereunder. The order shall be a *sub-part* of such part.

### **Administrative Board**

#### **§ 936.20 Establishment and membership.**

A Blackberry Administrative Board is hereby established (hereinafter referred to as "Board") and shall consist of nine members, each of whom shall have an alternate, to administer the terms and provisions of this part. Nine of the members and their respective alternates shall be growers or officers or employees of corporate growers.

#### **§ 936.21 Eligibility.**

Each grower member and alternate member of the Board shall be, at the time of selection and during the term of office, a grower, or an officer or employee of a grower, and shall be a resident of the production area.

#### **§ 936.22 Term of office.**

The term of office of each member and alternate member of the Board shall be

for three calendar years: *Provided*, That one-third of the initial members and alternates shall serve for terms ending May 31, 2004, one-third of the initial

members and alternates shall serve for terms ending May 31, 2005, and one-third of the initial members and alternates shall serve for terms ending May 31, 2006. Members and alternates shall serve in such capacity for the term of office for which they are selected and have qualified and until their respective successors are selected and have qualified. No member shall serve more than three consecutive terms as member and no alternate shall serve more than three consecutive terms as alternate.

#### **§ 936.23 Nominations.**

(a) *Procedure.* (1) Nominations for grower members of the Board, and their alternates, shall be made at nomination meetings of growers within the production area. One nominee shall be elected for each position to be filled. The names and addresses of each nominee shall be submitted to the Secretary not later than April 1 of each year.

(2) Only growers, including duly authorized officers or employees of corporate growers present and eligible to serve as grower members of the Board, shall participate in grower nominations.

(3) Nominations may be submitted to the Secretary based on the results of balloting by mail should the Board find mail balloting desirable. Ballots to be used may contain the names of candidates and a blank space for write-in candidates for each position, together with voting instructions.

(b) *Initial members.* As soon as practicable following the effective date of this subpart, the Secretary shall hold, or cause to be held, meetings of growers to nominate the initial members of the Board.

(c) The Board, with the approval of the Secretary, shall issue rules and regulations necessary to carry out the

provisions of this section or to change the procedures in this section in the event they are no longer practical.

#### **§ 936.24 Selection.**

Board members shall be selected by the Secretary from nominees submitted by the Board or from among other eligible persons. Each person so selected shall, prior to selection by the Secretary, qualify by filing a written background and acceptance statement indicating such person's willingness to serve in the position for which nominated.

#### **§ 936.25 Alternate members.**

An alternate for a member shall act in the place of such member in the member's absence, in the event of the member's death, removal, resignation, or disqualification, until a successor for the member's unexpired term has been selected and has qualified, or when requested and designated by the member.

#### **§ 936.26 Vacancies.**

To fill any vacancy occasioned by the failure of any person appointed as a member or as an alternate member of the Board to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the Board, a successor to fill the unexpired term shall be nominated and appointed in the manner specified in §§ 936.23 and 936.24. If the names of the nominees to fill any such vacancy are not made available to the Secretary within 30 days after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations, which appointment shall be made on the basis of representation provided for in § 936.20.

#### **§ 936.27 Powers.**

The Board shall have the following powers:

- (a) To administer this subpart in accordance with its terms and provisions;
- (b) To make rules and regulations to effectuate the terms and provisions of this subpart;
- (c) To receive, investigate, and report to the Secretary complaints of violations of this part; and
- (d) To recommend to the Secretary amendments to this subpart.

#### **§ 936.28 Duties.**

The Board shall have, among others, the following duties;

- (a) To select from among its membership such officers and adopt such rules or by-laws for the conduct of its meetings as it deems necessary;
- (b) To appoint such employees as it may deem necessary, and to determine the compensation and to define the duties of each employee;
- (c) To appoint such subcommittees and consultants as it may deem necessary;
- (d) To keep minutes, books, and records which will reflect all of the acts and transactions of the Board and which shall be subject to examination by the Secretary;
- (e) To prepare periodic statements of the financial operations of the Board and to make copies of each such statement available to growers and handlers for examination at the office of the Board;
- (f) To cause the books of the Board to be audited by a certified public accountant at such times as the Board may deem necessary, or as the Secretary may request, to submit copies of each audit report to the Secretary, and to make available a copy which does not contain confidential data for inspection at the offices of the Board by growers and handlers;
- (g) To act as intermediary between the Secretary and any grower or handler;
- (h) To investigate and assemble data on the growing, handling, and marketing conditions with respect to blackberries;
- (i) To submit to the Secretary such available information as may be

requested or that the Board may deem desirable and pertinent;

- (j) To notify growers and handlers of all meetings of the Board to consider recommendations for regulations and of all regulatory actions taken affecting growers and handlers;
- (k) To give the Secretary the same notice of meetings of the Board and its subcommittees as is given to its members;

(l) To investigate compliance and use means available to prevent violations of the provisions of this part;

(m) To establish, with the approval of the Secretary, such rules and regulations as are necessary or incidental to administration of this subpart, as are consistent with its provisions, and as would tend to accomplish the purposes of this subpart and the act.

#### **§ 936.29 Procedure.**

(a) At an assembled meeting, all votes shall be cast in person and six members of the Board shall constitute a quorum. Decisions of the Board shall require the concurring vote of at least six members except that recommendations made pursuant to § 936.44 and § 936.51 shall require 7 concurring votes.

(b) The Board may vote by mail, telephone, fax, internet, or other means of communication: *Provided*, That each proposition is explained accurately, fully, and identically to each member. All votes shall be confirmed promptly in writing.

#### **§ 936.30 Expenses and compensation.**

Members of the Board, their alternates, subcommittees including any special subcommittees, shall serve without compensation but shall receive such allowances for necessary expenses, incurred in performing their duties, as may be approved by the Board.

#### **Research**

#### **§ 936.31 Research and development projects.**

The Board, with the approval of the Secretary, may establish or provide for the establishment of production research, marketing research, and development projects designed to assist, improve, or promote the marketing, distribution, and consumption or efficient production of blackberries. Such projects may provide for any form of marketing promotion, including paid advertising. The expense of such projects shall be paid from funds collected pursuant to § 936.41.

Assessments collected from the handling of Class 5 blackberries may only be used for projects that directly benefit that class. No funds collected from the assessments of the other classes may be used for projects that directly benefit Class 5 blackberries.

### **Expenses and Assessments**

#### **§ 936.40 Expenses.**

The Board is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by it for such purposes as the Secretary may, pursuant to this subpart, determine to be appropriate, and for the maintenance and functioning of the Board during each marketing year. The Board shall submit to the Secretary a budget for each marketing year, including an explanation of the items appearing therein, and a recommendation as to the rate of assessment for such year.

#### **§ 936.41 Assessments.**

(a) *Requirements for payment.* Each person who first places blackberries into the current of commerce within the production area or from the area to points outside thereof shall pay to the Board, upon demand, that handler's pro rata share of the expenses authorized by the Secretary for each marketing year. Each handler's pro rata share shall be the rate of assessment fixed by the Secretary times the quantity of blackberries the handler first places into the current of commerce within the production area or

from the area to points outside thereof. The payment of assessments for the maintenance and functioning of the Board and for such purposes as the Secretary may, pursuant to this subpart, determine to be appropriate, may be required under this part throughout the period it is in effect, irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) *Rate of assessment.* The Secretary shall fix the rate of assessment to be paid by each handler. At any time during or after the marketing year, the Secretary may increase the rate of assessment as necessary to cover authorized expenses. Such increase shall be applied to all blackberries placed into the current of commerce within the production area or from the area to points outside thereof during the applicable marketing year. In order to provide funds for the administration of this part before sufficient operating income is available from assessments, the Board may accept advance assessments and may also borrow money for such purpose. Advance assessments received from a handler shall be credited toward assessments levied against the handler during the marketing year.

#### **§ 936.42 Accounting.**

(a) *Excess funds.* At the end of a marketing year, funds in excess of the year's expenses may be placed in an operating reserve not to exceed approximately two marketing year's operational expenses or such lower limit as the Board, with the approval of the Secretary, may establish. Funds in such reserve shall be available for use by the Board for expenses authorized pursuant to § 936.40. Funds in excess of those placed in the operating reserve shall be refunded to handlers: *Provided*, That any sum paid by a first handler in excess of that handler's pro rata share of the expenses during any marketing year may be applied by the Board at the end of such marketing year to any outstanding obligations due the Board from such person. Each handler's share of such

excess funds shall be the amount of assessments paid in excess of that handler's pro rata share.

(b) *Disposition of funds upon termination of order.* Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided*, That to the extent practicable, such funds will be returned pro rata to the first handler from whom such funds were collected.

#### **§936.43 Quality control.**

(a) *Quality standards.* The Board may establish, with the approval of the Secretary, such minimum quality and inspection requirements applicable to blackberries as will contribute to orderly marketing or be in the public interest. If such requirements are adopted, no handler shall process blackberries into manufactured products or sell manufactured products in the current of commerce unless such blackberries used in the manufacture of products meet the applicable requirements as evidenced by certification acceptable to the Board. The Board, with the approval of the Secretary, may establish rules and regulations necessary and incidental to the administration of this section.

(b) *Inspection and certification.* Whenever the handling of any blackberries requires inspection pursuant to this part, each handler who handles blackberries shall cause such blackberries to be inspected by the appropriate USDA agency and certified by it as meeting the applicable requirements of such regulation: *Provided*, That inspection and certification shall be required for blackberries previously have been so inspected and certified only if such blackberries have been regraded, resorted, repackaged, or in any other way further prepared for market. Promptly after inspection and certification, each such handler shall submit, or cause to be submitted, to the Board a copy of the certificate of

inspection issued with respect to such blackberries.

### **Volume Limitations**

#### **§ 936.50 Marketing policy.**

(a) The Board shall meet on or before March 15 of each year to adopt a marketing policy for the ensuing marketing year or years. As soon as is practical following the meeting or meetings, the Board shall submit to the Secretary recommendations for volume regulations deemed necessary to meet market requirements and establish orderly marketing conditions. Additional reports shall be submitted to the Secretary if the Board subsequently adopts a new or revised policy because of changes in the demand and supply situation with respect to the various classes of blackberries.

(b) In determining such marketing policy, Board consideration shall include but not be limited to:

- (1) The estimated quantity of salable blackberries of each class held by growers and handlers;
- (2) The estimated demand for each class of blackberries;
- (3) Prospective production of each class of blackberries;
- (4) Total of allotment bases of each class of blackberries for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year;
- (5) The quantity of blackberries, by class, in storage;
- (6) Grower prices of blackberries, including prices for each class of blackberries;
- (7) General market conditions for each class of blackberries, including whether the estimated season average price to growers is likely to exceed parity.

(c) Notice of the marketing policy recommendations for a marketing year and any later changes shall be announced publicly by the Board, and be submitted promptly to the Secretary and all growers and handlers. The Board shall

publicly announce its marketing policy or revision thereof and notice and contents thereof shall be submitted to growers and handlers by bulletins or through appropriate media.

#### **§ 936.51 Recommendations for volume regulation.**

(a) If the Board's marketing policy considerations indicate a need for limiting the quantity of blackberries of any class marketed, the Board shall recommend to the Secretary a salable quantity and allotment percentage for the ensuing marketing year. Such recommendations shall be made prior to March 15, or such other date as the Board, with the approval of the Secretary, may establish.

(b) At any time during the marketing year for which the Secretary, pursuant to § 936.52(a), has established a salable quantity and an allotment percentage for each class of blackberries, the Board may recommend to the Secretary that such quantity be increased with an appropriate increase in the allotment percentage. Each such recommendation, together with the Board's reason for such recommendation, shall be submitted promptly to the Secretary.

#### **§ 936.52 Issuance of volume regulation.**

(a) Whenever the Secretary finds, on the basis of the Board's recommendation or other information, that limiting the total quantity of a class of blackberries of any crop that handlers may handle on behalf of growers during a marketing year, would tend to effectuate the declared policy of the act, the Secretary shall establish the salable quantity for that class of blackberries. The salable quantity shall be prorated among growers by applying an allotment percentage to each grower's allotment base for that class of blackberries. The allotment percentage shall be established for each class of blackberries by dividing the salable quantity by the total of all

growers' allotment bases for the same class of blackberries.

(b) When an allotment percentage for a class of blackberries is established for any marketing year, no handler shall place in the current of commerce on behalf of growers any blackberries of that class during such year unless:

(1) It is, at the time of handling, within the unused portion of a grower's annual allotment, and

(2) Such handler notifies the Board of the handling in such manner as it may prescribe.

#### **§ 936.53 Allotment base.**

(a) *Initial issuance.* Each grower desiring an allotment base for one or more classes of blackberries shall register with the Board and furnish to it, on forms provided by the Board, a report of the number of pounds of each class of blackberries sold during each of the marketing years of 1997 through 2002, which is the representative base period, and the number of pounds of each class of blackberries currently available for sale and the location of such blackberries, the name and address of each handler, the quantity of blackberries by class sold to each handler, the acreage and location of each year's production of blackberries, and any additional information requested by the Board. A grower who has changed or changes identity from an individual grower to a partnership or corporate grower, or from a partnership to a corporate or individual grower, or from a corporate to a partnership or individual grower, may for the purpose of establishing the initial and subsequent allotment base, register with the Board as one and the same person.

(b)(1) Initially, the allotment base for each class of blackberries shall be established by the Board for each registered grower, at the option of such grower, as follows:

- (i) The average annual number of pounds of blackberries of that class sold during the six marketing years of the representative base period; or

(ii) The average annual number of pounds of that class of blackberries sold during the representative period plus 16 2/3 percent of blackberries of that class currently available for sale; or

(iii) The quantity of that class of blackberries sold during the 2002 marketing year, plus the quantity of that class of blackberries currently available for sale.

(2) If a grower has blackberries planted by June 1, 2003, but has no sales history during the representative period, the grower's allotment base shall be established by multiplying its acreage to be harvested for each class of blackberries by the average amount of blackberries per acre sold or the allotment base of other growers within the production area, whichever is more representative, in which the acreage is located: *Provided*, That, the Board shall review and adjust these allotment bases in accordance with paragraph (d) of this section on the basis of the grower's sales of blackberries.

(c)(1) Beginning with the 2004-2005 marketing year, the Board shall make additional allotment bases available for each class of blackberries for which demand is increasing. Fifty percent of these additional allotment bases shall be made available for new growers and 50 percent made available for existing growers.

(2) Any person may apply for an additional allotment base for any class of blackberries by filing an application with the Board on or before December 1 of the marketing year preceding the marketing year for which the additional allotment bases will be made available.

(3) The Board shall, with the approval of the Secretary, establish rules and regulations to be used for determining the distribution of additional allotment bases. In establishing such rules, the Board shall take into account, among other things, the minimum economic enterprise requirements for the production of blackberries, the applicant's ability to produce blackberries, the area where the

blackberries will be produced and other economic and marketing factors.

(d) The right to each grower receiving an allotment base, or any legal successor in interest, to retain all or part of an allotment base, shall be dependent on continuance to make a bona fide effort to produce the annual allotment referable thereto and failing to do so, such allotment base shall be reduced by an amount equivalent to such unproduced portions.

#### **§ 936.54 Issuance of annual allotments.**

(a) Whenever the Secretary establishes a salable quantity and allotment percentage for a class of blackberries that may be freely marketed during a marketing year, the Board shall issue an annual allotment to each grower holding an allotment base for that class of blackberries. Each grower's annual allotment for a class of blackberries shall be determined by multiplying the grower's allotment base for that class of blackberries by the applicable allotment percentage.

(b) On or before December 1, the Board shall furnish each registered holder of an allotment base a form for the grower to apply for an annual allotment for the ensuing marketing year. The Board, with the approval of the Secretary, shall establish rules and regulations prescribing the information to be submitted on this form. The Board shall notify each grower of the grower's annual allotment for each class of blackberries within 15 days after the Secretary establishes the salable quantity and allotment percentage.

#### **§ 936.55 Identification.**

(a) Each handler shall, under supervision of the Board, identify each class of blackberries, within 30 days following its production, or such other period of time as is recommended by the Board with the approval of the Secretary.

(b) Identification shall indicate whether the blackberries are salable or excess blackberries and include the name of the grower, the class of blackberries, the net weight, the container number and such other information as may be required by the Board.

(c) Identification shall be accomplished in accordance with rules and regulations established by the Board with the approval of the Secretary.

(d) No handler shall handle as salable blackberries any blackberries that have not been identified as provided in this section, and no person shall alter or remove any identification except when incidental to final disposition.

#### **§ 936.56 Excess blackberries.**

Blackberries of any class in excess of a grower's applicable annual allotment shall be identified as excess blackberries and shall be disposed of as follows:

(a) Before October 15, or such date as the Board, with the approval of the Secretary, may establish, a grower, following notification of the Board, may transfer excess blackberries to another grower to enable that grower to fill a deficiency in that grower's annual allotment, or

(b) Before November 1, or such other date as the Board, with the approval of the Secretary, may establish, excess blackberries, not used to fill another grower's deficiency, shall be stored under Board supervision. Such blackberries shall be stored for the account of the grower. No handler shall place excess blackberries into the current of commerce within the production area or from the production area to points outside and no grower shall deliver excess blackberries to other than the Board or its designees.

(c) The Board, with the approval of the Secretary, may establish such rules and regulations as it deems necessary for the transfer or storage of excess blackberries.

#### **§ 936.57 Reserve pool requirements.**

(a) On November 1, or such other date as the Board, with the approval of the Secretary may establish, the Board shall pool excess blackberries as reserve blackberries in such manner as to accurately account for its receipt, storage, and disposition. Reserve blackberries will be stored for the account of the grower according to the year produced, the class of blackberries, and such other grade or identification as may be used in normal commercial trade practices.

(b) When the Board finds that additional blackberries are needed to fill the normal market demand, it shall allow all or a portion of the reserve blackberries to be designated as salable. The Board may establish rules and regulations governing the transfer of blackberries.

(c) The Board may allow reserve blackberries for market development projects approved by the Secretary. Such projects may be conducted by the Board or in conjunction with or through handlers.

(d) *Pool expenses and proceeds.* Expenses incurred by the Board in handling and storing reserve blackberries shall be paid by the equity holders. The proceeds from the disposition of reserve blackberries shall be distributed, after deduction of any expenses incurred by the Board in receiving, handling, storing, and disposing thereof, to the equity holders or their successors in interest, on the basis of the number of pounds, class of blackberries and quality credited to each equity holder's account in the pool. A full accounting to each equity holder, or successor in interest, in each reserve pool shall be made by the Board annually.

#### **§ 936.58 Handling for special purposes.**

Upon the basis of the recommendations and information submitted by the Board, or from other available information, the Secretary may issue special regulations, or modify, suspend or terminate requirements in effect pursuant to §§ 936.41,

936.44, 936.52, and 936.60 or any combination thereof for the following purposes:

- (a) Shipments of blackberries for relief or to charitable institutions,
- (b) Shipment of blackberries for fresh use;
- (c) Roadside stands or farmers markets;
- (d) Experimentation;
- (e) Other purposes which may be recommended by the Board and approved by the Secretary.

#### **§ 936.59 Exempt blackberries.**

Blackberries held by a grower or handler on the effective date of this subpart shall not be regulated under this subpart if reported and identified to the Board not later than 60 days after that date. Any such blackberries not reported and identified to the Board shall be subject to all regulation under this subpart.

#### **§ 936.60 Transfers.**

(a) Nothing contained in this part shall prevent a grower from transferring the location where that grower's annual allotment is produced to another location except that the grower shall report the transfer to the Board within 30 days after the transfer.

(b) A grower may transfer all or part of an allotment base to another grower under rules and regulations established by the Board, with the approval of the Secretary: *Provided*, That the allotment base obtained by transfer from another grower or issued pursuant to § 936.53 (c)(1) shall not be transferred for at least 2 years following transfer or issuance, and that the person receiving the allotment base submit to the Board, evidence of an ability to produce and sell blackberries from such allotment base in the first marketing year following the transfer or issuance of the allotment base.

### **Reports and Records**

#### **§ 936.70 Reports.**

(a) *Inventory.* Each handler shall file with the Board a certified report showing such information as the Board may specify with respect to any blackberries which were held by the handler at such times as the Board may designate.

(b) *Receipts.* Each handler shall, upon request of the Board, file with the Board a certified report showing for each lot of blackberries received, the identifying marks, class of blackberries, weight, place of production, and the grower's name and address at such times as the Board may designate.

(c) *Other reports.* Upon the request of the Board, each handler shall furnish such other information as may be necessary to enable the Board to exercise its powers and perform its duties under this part.

#### **§ 936.71 Records.**

Each handler shall maintain such records pertaining to all blackberries handled as will substantiate the required reports. All such records shall be maintained for not less than 3 years after the termination of the marketing year to which such records relate.

#### **§ 936.72 Verification of reports and records.**

For the purpose of assuring compliance with record keeping requirements and verifying reports filed by growers and handlers, the Secretary and the Board, through its duly authorized employees, shall have access to any premises where applicable records are maintained, where blackberries are received or held, and at any time during reasonable business hours, shall be permitted to inspect such handlers' premises, and any and all records of such handlers with respect to matters within the purview of this part.

#### **§ 936.73 Confidential information.**

All reports and records furnished or submitted by handlers to, or obtained by the employees of the Board, which contain data or information constituting a trade secret or disclosing the trade position, financial condition, or business operations of the particular handler from whom received, shall be treated as confidential and the reports and all information obtained from records shall, at all times, be kept in the custody and under the control of one or more employees of the Board who shall disclose such information to no person other than the Secretary.

### Miscellaneous Provisions

#### § 936.80 Compliance.

No person shall handle blackberries except in conformity with the provisions of this part.

#### § 985.81 Rights of the Secretary

Members of the Board and subcommittees, and any agents, employees or representatives thereof, shall be subject to removal or suspension by the Secretary at any time. Each and every decision, determination, and other act of the Board shall be subject to the continuing right of disapproval by the Secretary at any time. Upon such disapproval, the disapproved action of the Board shall be deemed null and void, except as to acts done in reliance thereon or in accordance therewith prior to such disapproval by the Secretary.

#### § 936.82 Derogation

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States (a) to exercise any powers granted by the act or otherwise, or (b) in accordance with such powers, to act in the premises whenever such action is deemed advisable.

#### § 936.83 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States or name any agency or division in the U.S. Department of Agriculture, to act as the Secretary's agent or representative in connection with any of the provisions of this part.

#### § 936.84 Personal liability.

No member or alternative member of the Board and no employee or agent of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, employee, or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

#### § 936.85 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon its termination, except with respect to acts done under and during the existence of this part.

#### § 936.86 Separability.

If any provision of this part is declared invalid or the applicability thereof to any person, circumstance or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

#### § 936.87 Effective time.

The provisions of this subpart, and of any amendment thereto, shall become effective at such time as the Secretary may declare and shall continue in force until terminated or suspended in one of the ways specified in § 936.72.

#### § 936.88 Termination.

(a) *Failure to effectuate.* The Secretary shall terminate or suspend the operation of any or all of the provisions of this part upon a finding that such provisions obstruct or do not tend to effectuate the declared policy of the act.

(b) *Referendum.* Within 6 years of the effective date of this subpart the Secretary shall conduct a continuance referendum to ascertain whether continuance of this subpart is favored by producers. Subsequent referenda to ascertain continuance shall be conducted very six years thereafter. The Secretary shall terminate the provisions of this subpart at the end of any marketing year upon a finding that such termination is favored by a majority of the growers who, during the preceding marketing year, produced for market more than 50 percent of the volume of blackberries so produced: *Provided*, That termination shall be effective only if announced before May 31 of the then current marketing year.

(c) *Termination of act.* The provisions of this subpart shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

#### § 936.89 Proceedings after termination.

Upon termination of the provisions of this part, the Board shall, for the purpose of liquidating the affairs of the Board, continue as trustees of all the funds and property then in its possession or under its control, including claims for any funds unpaid or property not delivered at the time of such termination. The said trustees shall (a) continue in such capacity until discharged by the Secretary; (b) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to such persons as the Secretary may direct; and (c) upon the request of the Secretary execute such assignments or other instruments necessary or appropriate to vest in such person full



title and right to all of the funds, property, and claims vested in the Board or the trustees pursuant thereto. Any person to whom funds, property, or claims have been transferred or delivered, pursuant to this section, shall be subject to the same obligation imposed upon the Board and upon trustees.

**§ 936.90 Effect of termination or amendment.**

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued hereunder, or (b) release or extinguish any violation of this subpart or any regulation issued hereunder, or (c) affect or impair any rights or remedies of the Secretary or any other person with respect to any such violation.